

(2019) 04 OHC CK 0035
In the Orissa High Court
Case No : SA No.232 Of 1983

Satrughna Jena (dead) through L.Rs. APPELLANT
Vs
Arta Mohapatra (dead) through L.Rs RESPONDENT

Date of Decision : 25-04-2019

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 38A
Kerala Land Reforms Act, 1963 — Section 85(7)

Citation : (2019) 04 OHC CK 0035

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : Anupam Das, Manoj Das

Final Decision : Allowed

Judgement

Dr. A.K.Rath, J

1. Defendant is the appellant against a confirming judgment.
2. The dispute pertains to a betel garden measuring Ac.0.21 dec. appertaining to khata no.291, plot nos.402, 420 and 421 mouza-Chandanpur.
3. Plaintiffs-respondents instituted the suit for declaration of title and permanent injunction. Case of the plaintiff was that originally the suit land was recorded in the name of Kasinath Mohapatra. The suit land vested in the State in the year 1962. Kasinath died leaving behind his son Surendra and daughter Padmabati. Kasinath was in possession of the suit land. After his death, Surendra and Padmabati were in possession of the suit land. On 3.2.1970, Surendra alienated the suit property to Ramanath by means of a registered sale deed. On 25.8.1973, Padmabati sold her half share to Jyotshna, wife of Surendra. Jyotshna alienated the land to Ramanath by means of a registered sale deed dated 23.2.1976. On 1.4.1976, Ramanath sold

the entire land to plaintiff no.1 by means of a registered sale deed. Prior to execution of Ext.1, Padmabati sold the suit property to the defendant by means of a registered sale deed dated 25.2.1976. Defendant filed OEA Lease Case No.626 of 1976 before the Tahasildar for determination of fair and equitable rent. Plaintiff no.1 filed a similar application on the basis of Ext.1, which was registered as OEA Lease Case No.660 of 1976. During pendency of the applications, a proceeding under the Orissa Prevention of Land Encroachment Act (1948) was initiated against the defendant, since he was in unauthorised occupation of the land. Penalty was imposed on him. By order dated 20.8.1977, the Tahasildar settled the land in favour of plaintiff no.1. In pursuance of the order, a rent schedule was granted. The defendant filed a petition to review the order. By order dated 18.9.1978, the Tahasildar reviewed the order and cancelled the rent schedule granted in favour of plaintiff no.1. Assailing the order dated 18.9.1978, plaintiff no.1 preferred OEA Appeal No.16/78. The appeal was sub judice. With this factual scenario, they instituted the suit seeking the reliefs mentioned supra.

4. Defendant entered contest and filed a written statement denying the assertions made in the plaint. The case of the defendant was that he purchased the suit property from Padmabati on 25.2.1976. He is in possession of the same. He paid penalty to the Government for being unauthorised occupation of the land. The plaintiffs have no right to interfere with the same. The lease previously granted in favour of plaintiff no.1 has been cancelled. The plaintiffs have no claim over the suit property.

5. On the inter se pleadings of the parties, learned trial court struck six issues. Parties led evidence, both oral and documentary. On an anatomy of pleadings and evidence, learned trial court came to hold that the plaintiffs have right, title and interest over the suit land. Subsequent order cancelling the settlement in favour of plaintiff no.1 is invalid. Held so, it decreed the suit. Unsuccessful defendant filed an appeal before the learned District Judge, Puri, which was transferred to the court of learned 2nd Addl. District Judge, Puri and re-numbered as T.A No.40/91 of 1982/81. The appeal was eventually dismissed. It is apt to state here that during pendency of the appeal, appellant as well as defendant died, whereafter their legal representatives have been substituted.

6. The second appeal was admitted on the following substantial question of law;
â??If the decision in the suit was justified in view of the cancellation of the settlement by the Tahasildar and if the suit should have been stayed pending final disposal of the proceeding relating to settlement of land.â??

7. Heard Mr. Anupam Das on behalf of Mr. N.C. Pati, learned counsel for the appellants and Mr. Manoj Das on behalf of Mr.N.K. Sahu, learned counsel for the respondents.

8. Mr. Anupam Das learned counsel for the appellants submits that the plaintiffs filed an application before the OEA authority for fair and equitable

rent. The application of the plaintiffs was allowed. Thereafter, defendant filed an application for review of the order. The same was allowed. Against

the same, plaintiffs filed OEA Appeal No.16/78. In view of the same, the suit for declaration of title is not maintainable. Further proceeding of the suit

ought to have been stayed till disposal of OEA Appeal No.16/78.

9. Mr. Manoj Das, learned counsel for the respondents submits that after execution of the sale deed in favour of the plaintiffs, the plaintiffs filed an

application for fixation of fair and equitable rent. By order dated 20.8.1977, the Tahasildar allowed the application. Challenging the same, defendant

filed an application for review. The Tahasildar reviewed the order and cancelled the rent. He submits that in view of Section 38A of the OEA Act, the

Tahasildar has no power to review of his own order. There is no clerical or arithmetical mistake in the order of the Tahasildar warranting review of

the order.

10. There is no prayer to set aside the order passed by the OEA authorities in the review application.

11. In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others, AIR 1996 SC 906, the apex Court held as

follows:

â??â?|. In our opinion, even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an

order will, in fact be effective inter parties until it is successfully avoided or challenged in higher forum. Mere use of the word ""void"" is not determinative of its legal

impact. The word ""void"" has a relative rather than an absolute meaning. It only

conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity, depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise and in this case, the only complaint about the initiation of the suo moto proceedings by Board was, that it was not initiated on intimation by the State Land Board about the non-filing of the statement as required

by Section 85(7) of the Kerala Land Reforms Act. In our opinion, this is not a case where the infirmity is fundamental. It is unnecessary to consider the matter further.

7. In Halsbury's Laws of England, 4th edition, (Reissue) Volume 1(1) in paragraph 26, page 31, it is stated, thus:- "If an act or decision, or an order or other instrument

is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved.

In the Judicial Review of Administrative Action, De Smith. Woolf and Jowell, 1995 edition. at pages 259-260 the law is stated, thus:-

The erosion of the distinction between jurisdictional errors and non-jurisdictional errors has, as we have seen, correspondingly eroded the distinction between void and voidable decisions. The courts have become increasingly impatient with the distinction, to the extent that the situation today can be summarised as follows:

(1) All official decisions are presumed to be valid until set aside or otherwise held to be invalid by a court of competent Jurisdiction.

Similarly, Wade and Forsyth in Administrative Law, Seventh edition- 1994, have stated the law thus at pages 341-342 :-

“Every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful

action is by recourse to the law. In a well-known passage Lord Radcliffe said :

An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary

proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose

as the

most impeccable of orders.

This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision

of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and

latent defects.

12. Admittedly when OEA Appeal No.16/78 was sub judice, the suit was instituted. The question does arise as to whether the plaintiffs can pursue

two remedies ?

13. In Mumbai International Airport Private Limited Vrs. Golden Chariot Airport and another, (2010) 10 SCC 422, the apex Court went into depth of

common law doctrine of election. It held:

“43. Now the question is whether the contesting respondent on a complete volte face of its previous stand can urge its case of irrevocable licence before the

Estate Officer and now before this Court ? The answer has to be firmly in the negative.

44. Is an action at law a game of chess ? Can a litigant change and choose its stand to suit its convenience and prolong a civil litigation on such prevaricated pleas ?

45. The common law doctrine prohibiting approbation and reprobation is a facet of the law of estoppel and well established in our jurisprudence also. The doctrine of

election was discussed by Lords Blackburn in the decision of the House of Lords in Scarf v. Jardine wherein the learned lord formulated :

“a party in his own mind has thought that he would choose one of two remedies, even though he has written it down on a memorandum or has indicated it in

some other way, that alone will not bind him; but so soon as he has not only determined to follow one of his remedies but has communicated it to the other side in

such a way as to lead the opposite party to believe that he has made that choice, he has completed his election and can go no further; and whether he intended it or

not, if he has done an unequivocal act. the fact of his having done that unequivocal act to the knowledge of the persons concerned is an election.

14. In view of the foregoing discussions, the judgments and decrees of the courts below are set aside. The appeal is allowed. The matter is remitted

back to the learned trial court for de novo trial. It is open to the parties to adduce further evidence.

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